IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 608 OF 2004

Satish Baburao Potphode ..Petitioner.

V/s.

The District & Sessions Judge,
Solapur District, Solapur & Ors. ..Respondents.

Shri S.G. Kudle for the Petitioner.
Shri C.R. Sonawane, AGP for the State.

CORAM : S.B.MHASE & D.B.BHOSALE,JJ.
DATED : APRIL 11, 2005

PC :-

. Heard Shri Kudle for the Petitioner and Shri C.R. Sonawane, AGP for the State.

2. The petitioner was a peon, appointed in the Civil Court, J.D. Barshi in Solapur District. However, he requested the District Judge, Solapur to convert his services to that of sweeper and accordingly, on 01.06.2000, the services of the petitioner were converted as a sweeper and he was posted as such at Malshiras Civil Court. Since there were complaints received from the Bar Association of the Malshiras Civil Court in respect of the sweeping

work, being not carried out properly by the petitioner and even the directions given by the concerned office to that effect were not properly followed by the petitioner, the petitioner was chargesheeted.

3. After holding a departmental enquiry, it was found that the petitioner has committed a misconduct by disobeying the orders of his superiors and therefore, ultimately, the District Judge, as per the departmental enquiry, has removed the petitioner from the service.

4. Against the said dismissal, an administrative appeal was preferred by the petitioner. However, by the order passed in the Administrative Appeal No. B-1/1027 of 2003, the Administrative Committee of the High Court has dismissed the said Appeal. The learned counsel Shri Kudle, appearing for the petitioner, initially tried to submit that when the petitioner was not desirous of getting his services converted to that of sweeper, he should not have been directed to work as sweeper. However, Shri Sonawane, learned AGP, has brought to our notice from the record of this case, that there was a written application directly

submitted by the petitioner to the District Judge, requesting for converting his services to that of sweeper. Shri Kudle then tried to submit that such an application was tendered by the petitioner under pressure and as such the same should not have been entertained by the concerned office unless it is submitted through the proper channel and since the said application of the petitioner was not submitted through the proper channel, the same should not have been considered by the concerned authority. In this respect, we cannot forget that there was a written request made by the petitioner directly to the District Judge and not through his immediate superiors or the presiding officer under whom the petitioner was working. If the said application had been submitted by the petitioner through his immediate superiors, then the grievance of Shri Kudle that such an application was given by the petitioner under pressure, would have some basis though such inference would not have been possible in every case. On the contrary, the application was directly submitted by the petitioner to the District Judge, which shows that there was no intervention by the immediate presiding officer of the petitioner so as to accept the argument of Shri Kudle that the said application was submitted

by the petitioner under pressure. It is further to be noted that the said application was not immediately granted by the concerned District Judge because at that time, there was no vacancy of sweeper. The vacancy occured in the year 2000 and thereafter, looking to the written request of the petitioner, his services were converted and he was posted to work as sweeper at Malshiris. While working as sweeper at Malshiras, the misconduct on the part of the petitioner has taken place.

5. So far as the departmental enquiry is concerned, the same has been conducted in accordance with the rules; because the chargesheet was given, witnesses were examined in the presence of the petitioner and they were allowed to be cross-examined by the petitioner and, therefore, we do not find that there was any decrepancy in the departmental enquiry. The grievance made by Shri Kudle in respect of the departmental enquiry is not of any consequence so as to persuade us to admit this matter and or to intervene in the order under challenge in this petition.

6. As a last resort, it is submitted by Shri

Kudle, that the petitioner is from schedule cast family. He has lost his services and he could not understand the seriousness of the matter as a whole and now it is not only a serious punishment to him alone but to his entire family and considering that the petitioner was the only earning member, his family members should not suffer for their bread and butter for the misconduct on the part of the petitioner. Shri Kudle also submits that since the petitioner come from the lower strata of the society, sympathy should be shown to him and lesser punishment would be sufficient in the facts and circumstances of the present case. However, we find that while exercising our jurisdiction under Article 226, we cannot go into these areas. These are the areas to be considered by the employer seating on the administrative side and therefore, we do not propose to entertain the appeal made by Shri Kudle, which is based on sympathy.

7. Lastly, Shri Kudle submits that his client will approach the administrative committee for a sympathy. Whether to approach the administrative committee or not is the absolutely at the will and desires of the petitioner. If the petitioner

approaches the administrative committee, it is for the administrative committee to consider such an application. We make it clear, whether to consider such an application or not, is for the said Committee to decide. We only make it clear that on merits we do not find any substance in the petition so as to admit petition for further hearing and hence the petition stands rejected in limine.

(D.B.BHOSALE, J) (S.B.MHASE,J)

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spb/-